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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,706	01/02/2004	Gary T. Roe	4017M	3804

7590 01/06/2005  
S. Michael Bender  
P.O. Box 530399  
St. Petersburg, FL 33747

EXAMINER

KING, ANITA M

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 01/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/750,706

Applicant(s)

ROE ET AL.

Examiner

Anita M. King

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

This is the second office action for application number 10/750,706, Portable Beverage Holder, filed on January 2, 2004.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the claim terminology "a lower extent" and "an upper extent" now included in claim 1 is not cited in the specification.

### ***Claim Objections***

Claim 5 is objected to because of the following informality: in line 3, "clamp" should be changed to --clamping--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

Claims 5, 7, and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 has ambiguous claim terminology; it is unclear if "a top hanger portion," in line 4 of the claim is intended to refer to the original recitation of the term "a linear portion," in line 6 of claim 1.

Claim 7 has ambiguous claim terminology where it is unclear whether latter recitations of originally cited terminology are intended to refer to the originally cited

terms. It is unclear if "hanger, free-end portions," in line 3, of claim 7 is intended to refer to the original recitation of the term "free end portions" bridging lines 5 and 6 of claim 1.

Claim 9 has ambiguous claim terminology; it is unclear if "a top hanger portion," in line 8 of the claim is intended to refer to the original recitation of the term "a linear portion," in line 5 of the claim.

Claim 9 has ambiguous claim terminology where it is unclear whether latter recitations of originally cited terminology are intended to refer to the originally cited terms. It is unclear if "hanger, free-end portions," in line 13 of the claim is intended to refer to the original recitation of the term "free end portions" line 5 of the claim.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 4, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,734,439 to Wintz in view of U.S. Patent 2,926,879 to Dietrich. Wintz discloses a portable beverage holder apparatus, comprising: clamping means (27); a hanger member (20); clamp-to-hanger hinge means (32, 34) connected between the clamping means and the hanger member having a lower extent with axially aligned, laterally spaced, free end portions and an upper extent; a cup unit (13); hanger-to-cup hinge means (@18) connected between the hanger member and the cup unit; wherein

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the clamp-to-hanger hinge means include a clamp-to-hanger hinge assembly; wherein the clamp-to-hanger hinge assembly a top hanger reception channel (34) in the clamping means, and a top hanger portion (32) in the hanger member, wherein the top hanger portion is received in the top hanger reception channel; and wherein the hanger-to-cup hinge means include a hanger-to-cup hinge assembly.

Wintz discloses the claimed invention except for the limitations of the hanger member having a lower extent and the upper extent having a linear portion parallel with the free ends portions. Dietrich teaches a portable beverage holder apparatus including a hanger member (12) having a lower extent with axially aligned, laterally spaced, free end portions (40) and an upper extent with a linear portion (@13) parallel with the free end portions. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the hanger member in Wintz to have included the hanger member as taught by Dietrich for the purpose of providing an aesthetically different, mechanically equivalent, hanger member for supporting the cup unit on the clamping means.

Claims 1 and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wintz in view of U.S. Patent 3,840,204 to Thomas et al., hereinafter, Thomas. Wintz discloses the limitations of claims 1, 5, and 6 as cited in the previous paragraph. Wintz discloses the claimed invention except for the limitations of hanger-to-cup hinge assembly having hanger, free-end portions received in the hanger-reception channels and washers. Thomas teaches a portable holder apparatus including a hanger member (12) having a lower extent with axially aligned, laterally spaced, free end portions (17)

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and an upper extent, a cup unit (38'), a hanger-to-cup hinge means including a hanger-to-cup hinge assembly, hanger-reception channels (40) in the cup unit, wherein the hanger, free-end portions are received in the hanger-reception channels, and outside washers (Fig. 1) between the outside portion of the hanger, free-end portions and the cup unit; and inside washers (19) between inside portions of the hanger, free-end portions and the cup unit. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the apparatus in Wintz to have included the hanger member and cup unit as taught by Thomas for the purpose of providing an alternative cup unit that will contain any condensation formed on the beverage container to prevent the moisture from dripping on a given surface.

Wintz combined with Thomas disclose the claimed invention except for the limitation of the upper extent having a linear portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the hanger member in Wintz combined with Thomas to have included a linear portion for the purpose of providing an different aesthetic appearance to the hanger member and since such a modification would not have produced any unexpected results.

Claim 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wintz combined with Dietrich and in further view of U.S. Patent 4,887,784 to Kayali. Wintz combined with Dietrich disclose the claimed invention except for the limitation of the clamping means including a spring clamp assembly. Kayali teaches a portable beverage holder apparatus including a clamping means (300), a hanger member (215), clamp-to-hanger hinge means (235) connected to the clamping means and hanger

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member, a cup unit (100), hanger-to-cup hinge means (225), and wherein the clamping means includes a spring clamp assembly having grasping portions (310), clamping portions (33), and a spring (not shown) for urging the clamping portions towards each other. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the clamping means in Wintz combined with Dietrich to have included the clamping means as taught by Kayali for the purpose of alternative means for attaching the portable beverage apparatus to a supporting surface.

Claims 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wintz combined with Kayali and in further view of Thomas. Wintz discloses a portable beverage holder apparatus, comprising a clamping means; a hanger member having a lower extent with axially aligned, laterally spaced, free end portions and an upper extent; clamp-to-hanger hinge means including a hinge assembly connected between the clamping means and the hanger member, the clamp-to-hanger assembly having a top hanger reception channel in the clamping means, a top hanger portion in the hanger member, wherein the top hanger portion is received in the top hanger reception channel; a cup unit; and a hanger-to-cup hinge means connected between the hanger member and the cup unit, the hanger-to-cup hinge means including a hanger-to-cup hinge assembly.

Wintz discloses the claimed invention except for the limitation of the clamping means having a spring clamp assembly. Kayali teaches a portable beverage holder apparatus including a clamping means (300), a hanger member (215), clamp-to-hanger

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hinge means (235) connected to the clamping means and hanger member, a cup unit (100), hanger-to-cup hinge means (225), and wherein the clamping means includes a spring clamp assembly having grasping portions (310), clamping portions (33), and a spring (not shown) for urging the clamping portions towards each other. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the clamping means in Wintz to have included the clamping means as taught by Kayali for the purpose of alternative means for attaching the portable beverage apparatus to a supporting surface.

Wintz combined with Kayali disclose the claimed invention except for the limitations of hanger-reception channels in the cup unit, the hanger free-end portions received in the channels, and inside and outside washers. Thomas teaches a portable holder apparatus including a hanger member (12) having a lower extent with axially aligned, laterally spaced, free end portions (17) and an upper extent, a cup unit (38'), a hanger-to-cup hinge means including a hanger-to-cup hinge assembly, hanger-reception channels (40) in the cup unit, wherein the hanger, free-end portions are received in the hanger-reception channels, and outside washers (Fig. 1) between the outside portion of the hanger, free-end portions and the cup unit; and inside washers (19) between inside portions of the hanger, free-end portions and the cup unit. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the apparatus in Wintz combined with Kayali to have included the hanger member and cup unit as taught by Thomas for the purpose of providing an



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alternative cup unit that will contain any condensation formed on the beverage container to prevent the moisture from dripping on a given surface.

Wintz combined with Kayali and Thomas disclose the claimed invention except for the limitation of the upper extent having a linear portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the hanger member in Thomas to have included a linear portion for the purpose of providing an different aesthetic appearance to the hanger member and since such a modification would not have produced any unexpected results.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 3,619,852 to Eckberg

U.S. Patent D236,175 to Wintz

U.S. Patent 5,402,910 to Pilney

U.S. Patent 5,445,425 to Lyver

U.S. Patent 6,321,932 to Butters, III

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Eckberg discloses a bail having a lower extent with axially aligned, laterally spaced free end portions and an upper extent having a linear portion parallel with the free ends.

Wintz discloses a receptacle for drink holders. Pilney discloses a container having a wire hanger member with a linear portion and free end portions. Lyver discloses a handle having a upper extent with a linear portion and a lower extent with free ends for receivable within reception channels in bracket attached to a bucket. Butters, III discloses a handle having an upper extent with a linear portion and a lower extent having laterally spaced apart free end portions, which extend parallel to the linear portion.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (703) 308-2162. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Anita M. King  
Primary Examiner  
Art Unit 3632

January 4, 2005